THE HON'BLE SRI. JUSTICE GODA RAGHURAM

W.P.No. 4424 of 2006

07-03-2006

Between:-

Smt. Goli Mani

Petitioner

And

The Dy. Commissioner, Prohibition and Excise, Vijayawada

Respondent

THE HON'BLE MR. JUSTICE GODA RAGHURAM

W.P.No. 4424 of 2006

Oral order:

Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise. At request, the writ petition is disposed of at the stage of admission.

The petitioner claims to be the owner of a lorry bearing No. AP 16 TU 4463. She purchased the lorry in 2004 after obtaining a loan. She claims that the lorry is being employed to transport cement and other commercial goods. While so, she received a show cause notice on 28-02-2006 from the respondent under Section 13-A of the Andhra Pradesh Prohibition and Excise (Amendment) Act, 1995 (for short 'the Act') intimating that the lorry was seized on 17-02-2006 at Nandigama, Krishna district for the alleged offence of carrying 250 liters of liquor and calling upon her to show

cause why the lorry be not confiscated for specified excise offences. After receiving the show cause notice dated 17-02-2006, the petitioner submitted a representation on 01-03-2006 denying guilt and requesting for interim release of the vehicle.

By the order dated 01-03-2006 (impugned herein), the respondent permitted the petitioner to have interim custody of the seized lorry subject to three conditions viz.,

i. A bank guarantee/F.D.R. in favour of the Dy. Commissioner of Prohibition and Excise for a period of 5 years for full value of the vehicle as assessed by M.V.I. concerned.

ii. An affidavit on Non-judicial stamp paper worth Rs.10/- stating that the vehicle was not involved in any Excise crime earlier.

iii. An undertaking on Non-judicial stamp paper worth Rs.100/- to the effect that the vehicle will not be sold out, alienated or part with in any manner and it will be produced before the authority in the present condition as and when called for etc., in usual proforma.

The petitioner is not aggrieved by condition Nos. 2 and 3. Her grievance is only in respect of Condition No.1, which she claims is onerous. The petitioner states that the law declared and operative in the State is to be found in the judgment of a learned single Judge of this court in **S. Jaganmohan Reddy Vs. Prohb., & Excise Inspector, Tandur Stn.,** ([1]) . This Court, by the judgment supra, considered it appropriate that there be guidelines in the area so that the owners of the vehicles will know what to expect when they apply for release of the vehicles. The learned single Judge did recognize that if a vehicle is released, but ultimately found liable for confiscation, there must be some security for the value of the vehicle to safeguard the interests of the State. In the judgment supra, this Court expressed an opinion that certain guidelines could be usefully adopted by the Government and enumerated them as under (vide paragraph No.9 of the judgment):

i. in every case of seizure, full particulars of the owner should be obtained from the driver of the vehicle and notice should be invariably given to the owner immediately;

ii. in the case of commercial vehicles, such as buses, taxis and autos, there should be interim release of the vehicle immediately and in any case within 24

hours;

iii. in the case of such commercial vehicles an undertaking to produce the vehicle and not to alienate the same should be sufficient unless there is actually evidence to show that the driver had actively connived in the offence.

iv. In the case of private vehicles also, the name and other particulars of the owner should be obtained from the driver and a specific notice should be given to such owner's immediately;

v. The security for production of the vehicle not exceeding 10% of the value of the vehicles should be sufficient;

vi. Perhaps, it is possible to notify that in the case of cars, an amount of Rs.10,000/-; in the case of scooters, Rs.2,000/-; and in the case of mopeds, Rs.1,000/- should be deposited either by cash or by bank guarantee and on such deposit the vehicle would be immediately released. This should actually relieve the congestion in the yards where such vehicles are dumped.

vii. In every case of application for release of the vehicle, there must be a speaking order whenever it is decided not to release the vehicle so that the owner can take up the matter further.

The judgment also recorded that it is hoped that a circular would be issued in respect of other vehicles and displayed in the police stations and offices of the prohibition staff so that the owners would know of what to expect and what security be furnished in case of seizures of vehicles in contravention of excise laws.

Guideline No.5, suggested in the judgment supra, is to the effect that the security for production of private vehicles not exceeding 10% of the value of the vehicle should be sufficient.

True it is, that this court observed in the judgment supra that there should be certain guidelines, while exercising a broad spectrum of decision by the Excise Officers for determining the quantum of security that should be furnished as a condition precedent for permitting interim release of the vehicles.

Normatively the principle that there need be guidelines for structuring wide executive discretion is un-exceptionable. It is an equally settled principle of law governing the separation of powers between the three great departments of the State that it is not the province of the judicial branch to legislate where no legislation exists or to make rules where there are none. Occasional and interstitial legislation is all that is permitted to the judicial branch even in the Indian context of jurisprudence. On principle and authority, it must therefore follow that laying down guidelines for exercise of discretion by the executive branch is an area that is normally outside the province of the judicial branch. Suggestions could however be made and that is what has been done in the judgment supra, sensitizing the executive as to the need to have guidelines. However the guidelines suggested by this court in the judgment supra cannot themselves be elevated to the status of rules, which bind the discretion of the executive authorities. Such is not the intendment of the judgment of this court supra.

In the facts and circumstances of this case, it requires to be noticed that admittedly the petitioner purchased the vehicle in the year 2004 and this vehicle was seized for alleged commission of an excise offence. The impugned order directing release of the vehicle for interim custody of the petitioner merely directed furnishing of a bank guarantee or an FDR and for a period of five years for the full value of the vehicle as assessed by the Motor Vehicle Inspector concerned. Clearly, what is intended and what is meant, is the current full value of the vehicle, not the full value as on the date of purchase. If the vehicle were to be released for interim custody of the petitioner and were to be found liable for confiscation, there must be adequate security to safeguard the interests of the State. Therefore neither on principle nor on authority does this court discern any infirmity in the order of the respondent directing furnishing of the full value of the vehicle as security by way of bank guarantee/FDR as a condition precedent for the release of the vehicle. The judgment of this court supra does not *per se* constitute a rule by which the excise authorities of the State are invariably bound, as though it were a legislation or a statutory instrument. Suggestions by this court for executive consideration cannot in the considered view of this court be so construed and there appears no warrant for identification of 10% as an exclusive and invariable standard for assessing the appropriate degree of security in all events and circumstances.

For the aforesaid reasons, there are no merits. The writ petition is dismissed. No

costs.

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GODA RAGHURAM, J

Dated:07-03-2006

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